

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY DAVID POHL,

Defendant-Appellant.

UNPUBLISHED

May 12, 2005

No. 252301

Menominee Circuit Court

LC No. 03-002728-FH

Before: Murphy, P.J., and White and Smolenski, JJ.

MEMORANDUM.

Defendant appeals as of right his convictions of operating a motor vehicle while impaired (OWI), MCL 257.625, and resisting or obstructing an officer, MCL 750.479. He was sentenced as a fourth habitual offender, MCL 769.12, to forty months to fifteen years' imprisonment for OWI, third offense, and to six months to two years' imprisonment for resisting or obstructing an officer. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole argument on appeal is that the trial court erred in allowing the prosecutor to elicit testimony from the arresting officer regarding defendant's statement that he did not have a driver's license because of prior drunk driving convictions, which statement was made in response to the officer's request for defendant's license. The decision whether to admit evidence is reviewed for an abuse of discretion, but if a preliminary question of law is involved, e.g., whether a rule of evidence precludes admissibility, our review of that question is de novo. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999).

We find it unnecessary to determine whether the trial court erred in allowing the admission of the challenged evidence because, assuming error, it did not result in a miscarriage of justice as we cannot find that it is more probable than not that the error was outcome determinative. *Id.* at 495-496. Considering the trial court's cautionary instruction with respect to the challenged evidence, the abundant evidence of alcohol consumption and intoxication, and the conviction on a lesser offense than that charged, we conclude that the jury did not improperly use the evidence against defendant.

Affirmed.

/s/ William B. Murphy

/s/ Helene N. White

/s/ Michael R. Smolenski